IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7638 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UMIYA TEXTILE

Versus

AHMEDABAD MUNICIPAL CORP. THRO' MUNICIPAL COMMISSIONER

Appearance:

1. Special Civil Application No. 7638 of 1996

MR AM RAVAL for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1
M/S TRIVEDI & GUPTA for Respondent No. 2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. The petitioner who has purchased a parcel of land from G.I.D.C. in the year 1992 has approached this Court as the Corporation is demanding the property-tax even prior to his occupancy.

2. The short facts leading to the present petition are that the possession of the shed was taken on 5.5.92 and before that the Shed was not utilized by anyone as averred in the petition. However, the respondent no. 1 Ahmedabad Municipal Corporation, exercising its powers contained under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter known as the B.P.M.C.Act) issued the tax bill, the copy of which is produced at Annexure `C' demanding the arrears of Rs. 73,066.50 ps. The bill makes it clear that the person primarily liable to pay the tax is G.I.D.C. i.e. Gujarat Industrial Development Corporation. The bill was issued on 4.8.92 which was received on or about 28.9.92 which is clear from the date of the bill and the stamp put on it. The bill indicates General Tax, Water Tax, interest, Education Tax, Conservancy Tax etc. In the bill, it is indicated under each individual heading the amount of arrears as well as the amount required to be paid for the current year. So far as the relevant year of 1992-93 is concerned, the amount required to be paid, as indicated in the bill, is Rs.11,722.18ps. and considering the arrears of Rs. 73,066.50ps., the Corporation called upon the occupier to pay the sum of Rs. 84,838/- by rounding the figures. On behalf of the petitioner, possession receipt issued by G.I.D.C. dated 5.5.92 is also produced on the record which clearly indicates that the petitioner was put in possession of Shed no. C 1-30/44 situated in the Naroda Industrial Estate only on 5.5.92. The same is signed by and on behalf of the petitioner as well as the Addl.Estate Engineer D.D.Bhatt for G.I.D.C. and thus it is clear that the petitioner was put in possession on 5.5.92. It is in view of these facts, it seems that the Court issued notice and made it returnable on 23.10.96 by an order dated 9.10.96. The Division Bench, hearing the matter, on 30.10.96 passed an order as under :

" Despite sufficient time granted, L.A. for respondent-Corporation has no instructions. Hence Rule. Ad-interim relief in terms of para 10(A)".

Till today, neither the respondent G.I.D.C. nor the

respondent-A.M.C. has bothered to file reply. It is required to be noted that initially the Court is issuing the notice to see that the point being short in the matter, the matter can be disposed of at the earliest, however, from the respondents attitude it seems that they have not cooperated and therefore the Court was compelled to issue Rule. Till today, the reply is not filed. This speaks a lot about the administration. Mr.Munshaw submitted that he was asked by the Corporation to appear in the matter only yesterday i.e. 24.9.01. When the matter is on the board, it is for the learned advocate concerned to appear in the matter or not to appear or to see whether proper instructions are given or to see whether proper replies are filed. So far as the Court record is concerned, the Corporation was served initially and thereafter has not bothered to file its reply. Even G.I.D.C. has not bothered to file its reply and the petitioner is thrown like a shuttle-cock between the G.I.D.C. and the Corporation. In view of the fact that no affidavit-in-reply is filed either by the G.I.D.C. or by the Corporation and the fact that the material is produced on the record indicates that the possession was handed over only on 5.5.92, there is no reason as to why not to accept the say of the petitioner, when his contention is supported by the documentary evidence. If it was the case of the G.I.D.C. that the possession was given at an earlier point of time, then it was the duty of the G.I.D.C. to point out that the say of the petitioner is not right. At the same time, it was the duty of the respondent-Corporation to verify the facts from its own record and to say whether petitioner Umiya Textiles was in possession of the premises or not but it has chosen not to speak a word.

3. Learned Advocate appearing for the petitioner drew the attention of the Court to Annexure `M' page 20 dated 28.11.95 wherein the respondent-G.I.D.C. has addressed a letter to the petitioner pointing out that from the date on which the Shed was allotted to the petitioner, it was his responsibility to pay the municipal tax. It appears that on 30.11.95, in view of the demand raised by the Corporation, even a letter was written to the Corporation pointing out that in view of the letter dated 28.11.95 (Annexure `M'), it is not the responsibility of the petitioner to pay the tax before 5.5.92. The petitioner pointed out that after 5.5.92, he is paying the tax. He submitted that it is the duty of the Corporation to recover the tax from G.I.D.C. and not from the petitioner. It is required to be noted that from the bill Annexure `C', if perused, the responsibility is of the G.I.D.C. to pay the tax. After

the petitioner was allotted the shed in question, it appears that in municipal record his name has been entered in so far as the property in question is concerned. There are receipts produced at Annexure`K' collectively for the year 94-95 onward. The bill which is produced at page 30 clearly indicates that G.I.D.C. is responsible for the tax bill issued in the name of G.I.D.C. itself. For the subsequent period i.e. 95-96, the name of occupier namely the petitioner is indicated in the receipts, the copies of which are produced at page 31,32 & 33. The bill issued by Municipal Corporation for for April 95 to March 96, the name of occupier is shown as Umiya Textile i.e. the petitioner. Thus, it is very clear from the record that the petitioner's name was not indicated in the bill in question. The bill was issued to G.I.D.C. which is very clear from Annexure `C' wherein the name of the petitioner does not appear in the bill as the person occupying the premises. It is in view of this, the petitioner has contended that he cannot be fastened with the liability of the bill vide Annexure `C' and it is the responsibility of G.I.D.C. to pay the tax.

4. Mr.Raval submitted that if it is held that the petitioner is not liable to pay the tax, even then the Corporation will recover the amount by following procedure and the petitioner will suffer because his property will be attached in case of non-payment by G.I.D.C. On behalf of the G.I.D.C., it is contended that that being open land it is not the responsibility of the G.I.D.C. to pay the tax. What is annual letting value is defined in Sec. 2 of the B.P.M.C.Act. We are not reproducing the proviso as the same is not required to be considered in the facts and circumstances of this case. The said clause 1(A) of Sec. 2 reads as under :

" In this Act, unless there be something repugnant in the subject or context, :

1(A) "annual letting value" means -

(i) in relation to any period prior to 1st April, 1970, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situated therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.LVII of 1947) were not in force, reasonably be expected to let from year to year with reference to its use;

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture

or machinery contained or situated therein or thereon, might reasonably be expected to let from year to year with reference to its use;

and shall include all payment made or agreed to be made to the owner by person(other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto."

Thus, it is clear that the annual letting value refers to building or land or premises and it is not correct to say that for the land i.e. open land the Corporation is not entitled to levy any tax. Before us, on behalf of the G.I.D.C., apart from not filing an affidavit, no material is placed whatsoever to indicate that the respondent-Corporation cannot levy property tax. In our view, in absence of any material produced on record exempting G.I.D.C. from payment of tax, it cannot be said that the G.I.D.C. is not liable to pay the tax. It is under these circumstances, we direct the respondent-Corporation not to recover the tax from the petitioner for the period prior to date 5.5.92 i.e. date on which it was put in possession and it will be open for the respondent-Corporation to recover the tax from G.I.D.C. in accordance with law. With this direction, the petition stands allowed. Rule made absolute. No order as to cost.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

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